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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

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:: O R D E R ::

Hari Kishan & Ors. Vs. Appellate Rent Tribunal & Ors.

S.B. CIVIL WRIT PETITION NO.7054/2006.

Date of Order :: 16th August 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. J.L. Purohit, for the petitioners.
Mr. Manoj Bhandari, for the respondent No.3.

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BY THE COURT:

This writ petition has been preferred by the non-applicants tenants against the order dated 04.11.2006 (Annex.4) passed by the Appellate Rent Tribunal, Bikaner in Appeal No.151/2005 whereby the learned Appellate Tribunal has affirmed the certificate for recovery of possession issued by the Rent Tribunal, Bikaner on 24.09.2005 (Annex.3) while allowing petition for eviction filed by the respondent-landlord (Case No.146/2004) on the grounds that the demised premises were rendered unsafe and unfit for habitation; and that the tenants have acquired

possession of suitable alternative premises, adequate for their requirement.

The learned Rent Tribunal and the Appellate Tribunal have concurrently found that the suit shop was let out to Tillu Ram, father of the petitioners Nos. 1 to 3 and husband of petitioner No.4 on a rent of Rs.90/- per month; that earlier a suit was filed against the tenant Tillu Ram for eviction on the grounds of default, bonafide requirement and sub-letting that was decreed by the trial court but the decree was reversed by the appellate court and a second appeal taken to this Court was pending; that during the pendency of the second appeal, about 400 square feet area of the shop in question was acquired by the Municipal Council for road widening and about half portion of the shop was dismantled and thereby the premises were damaged and were thrown open.

The applicant-landlord alleged that the displaced tenants were allotted different shops and the non-applicants too have been allotted shop No.7 and they have started their business thereat; that the premises in question were in bad shape and the applicant wanted to raise new construction; and that the non-applicants-tenants have carried out material alteration by raising pucca construction on a portion of the shop.

The learned Rent Tribunal held proved all the three grounds of eviction aforesaid and issued certificate for recovery

of possession by its order dated 24.09.2005 (Annex.3). The Appellate Tribunal in its order dated 04.11.2006 (Annex.4) considered the evidence on record and endorsed the finding on the grounds of eviction that the premises have become unsafe and unfit for human habitation; and that the tenants have acquired possession of suitable alternative premises, adequate for their requirement. Though the Rent Tribunal has also decided the issue of material alteration in favour of the landlord but the said finding was reversed by the Appellate Tribunal. The Appellate Tribunal has, inter alia, observed that the tenants have been allotted shop of 12 ft. x 15 ft. size whereas the shop in question was about 52 square feet as per the applicant and about 75 square feet as per the non-applicants. It has been noticed that the alternative shop was allotted at a commercial place and was fit for the business of the tenants.

Aggrieved, the petitioners-tenants have filed this writ petition and it has been strenuously contended by learned counsel Mr. J.L. Purohit appearing for the petitioners that the so-called alternative premises were allotted only to the petitioners Nos. 1 and 3 and no shop was allotted in the name of the petitioners Nos. 2 and 4. Learned counsel further contended that the burden of proof that the alternative premises were suitable and adequate for the requirements of the tenants was on the landlord and the Tribunals concerned have erred in putting the

said burden conversely on the tenants.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner and having examined the material placed on record, this Court is clearly of opinion that this writ petition remains bereft of substance and does not merit admission.

It is noticed from the impugned orders that the Rent Tribunal has decided issue No.1 in favour of the applicant-landlord after examining the evidence adduced on record that the remaining portion of the shop in question, after its more one-half had gone in acquisition, was in dilapidated condition and has become unsafe and unfit for human habitation. The finding on issue No.1 has been clearly affirmed by the Appellate Tribunal in paragraph 8 of the impugned order dated 04.11.2006. Such finding essentially remains a finding of fact; and has neither been put to contention in this writ petition nor there appears any ground to challenge the same. When such finding stands concluded, the certificate for recovery of possession, with reference to Clause (m) of Section 9 of the Act of 2001, deserves to be affirmed and the writ petition deserves to be dismissed on this ground alone.

Apart from the aforesaid, this Court is satisfied that the Tribunals have rightly issued certificate for recovery of possession in terms of Clause (j) of Section 9 of the Act of 2001

for the tenants having acquired adequate accommodation. It has been noticed that the suit premises were about 75 square feet in area even if the dimensions stated by the defendant of 4½ ft. x 17 ft. be accepted whereas alternative shop of 120 square feet area has been allotted to them. The contention that the alternative shop has been allotted only to the petitioners Nos. 1 and 3 and not to the others is fundamentally misplaced because the petitioners are continuing with inherited tenancy from the original tenant Tillu Ram, father of the petitioners Nos. 1 to 3 and husband of petitioner No.4. Merely because the petitioners have continued on the suit shop after demise of the original tenant, it cannot be said that unless and until each one of them gets alternative accommodation, the ground with reference to Clause (j) of Section 9 of the Act of 2001 cannot be pressed upon into service. For the allotment having been made to the displaced tenants due to land acquisition, by its very nature, such allotment is sufficient to bring about the operation of Clause (j) of Section 9 of the Act of 2001 in the fact situation of this case.

The argument regarding burden of proof is also of no substance. The Tribunals concerned, after appreciation of evidence on record, have found that the alternative premises were situated at a place that was essentially a commercial place on the main road; and were surrounded by different commercial

establishments. Only after finding such facts that the Appellate Tribunal has noted that in such circumstances inadequacy of the alloted shop was required to be proved by the defendants. The observations so made remain unexceptionable. The findings by the Tribunals on the grounds of eviction in terms of Clauses (m) and (j) of Section 9 of the Act of 2001 call for no interference.

In the aforesaid view of the matter, there is no force in this writ petition and the same does not merit admission.

At this stage, learned counsel Mr. J.L. Purohit submitted that the petitioners have got their old business establishment at the shop in question and need reasonable time to uproot themselves altogether from the area in question and, therefore, some reasonable time beyond the statutory time may be allowed to the petitioners to vacate the disputed premises. Learned counsel Mr. Manoj Bhandari appearing for the contesting respondent though expressed reservations on seeking of extra time by the petitioners particularly when they have got alternative accommodation already available with them; but in all fairness submitted that in the circumstances of the case, the landlord would be agreeable for granting some extra time to the petitioners to vacate the suit premises upon their submitting requisite undertaking and making payment of rent as envisaged by law.

Having regard to the overall facts and circumstances of the case, and for the stand taken by the parties, it appears appropriate to allow extended time to the petitioners to vacate the suit premises but after putting them on terms and conditions.

Thus, this writ petition fails and is dismissed. However, the petitioners are granted time to vacate the suit premises by 31st March 2009 on the following conditions:-

(i) The petitioners shall personally submit an undertaking supported by affidavit before the Rent Tribunal within three weeks from today to the effect that on or before **31st March 2009,** they shall hand over peaceful and vacant possession of the premises in question to the landlord-applicant. They shall also undertake not to cause any damage to the premises nor to make any alteration and not to assign, sub-let or in any manner part with possession to any other person and not to put the premises to any use other than the present use and not to cause any nuisance.

(ii) The petitioners-tenants shall deposit within three weeks the arrears, if any, of the rent payable at the rate three times the existing rate of Rs.90/- per month, i.e. at Rs.270/- per month with effect from 24.09.2005; and shall further pay to the landlord the amount for use and occupation of the suit premises at the rate of Rs. 270/- per month or deposit this

amount in the bank account of the landlord (if particulars whereof are furnished by the landlord-applicant) month by month on or before 15th day of the next month.

It is made clear that upon failure on the part of the petitioners to comply with any of the conditions aforesaid or violating any terms of undertaking, the landlord-applicant shall be entitled to execute the certification for recovery of possession forthwith in accordance with law.

Mohan/ **(DINESH MAHESHWARI), J.**